Legal and Policy Review

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Executive Summary

This document reviews Iraq's most important documents dealing with governorate revenues: legal documents (the Constitution of 2005; Law No. 21 of 2008 as amended; and Law No. 130 of 1963 as amended), but also studies by experts. While certain recommendations that concern only the system of transfers, or only revenue assignment, are found in Deliverables 3 and 4 respectively, this report will present

- all recommendations to reform the Constitution with respect to the revenues of sub-national governments,
- many of the recommendations to reform Law No. 21 of 2008, and
- all recommendations with respect to Law No. 130 of 1963.

1. Recommendations with respect to the Constitution (Chapter 1)

Iraq's Constitution has, with respect to the revenues of sub-national tiers of government, some provisions that are good, and some that are unfortunate. The good ones should be implemented (this does not always happen), the bad ones amended as follows.

- Clause 19-9. Replace "This exclusion [namely, allowing some laws to have retroactive effect] shall not include laws on taxes and fees." by "This exclusion shall not include laws imposing new or higher taxes and fees." This amendment will allow tax amnesties. Because Iraq's sub-national taxes have not been administered for years, the power to declare a tax amnesty is desirable.
- Clause 28-1. In this requirement of a basis for taxes and fees in law, replace the word "fees" by a provision in Law No. 21 of 2008 outlawing the charging of fees without service provision (because that would be implicit taxation), and requiring fee rates to be approximately equal to the costs of the services.
- Clause 110-1. Add "Sub-national governments shall, notwithstanding the foregoing [in article 110 clause 1, that fiscal policy shall be among the exclusive powers of the federation], have powers to determine policies and local legislation with respect to the revenue sources assigned to them, subject to national legislation." This will safeguard a proper level of autonomy for subnational governments.
- Clause 112-1. Replace "its revenue" [with respect to oil and gas; the present formulation is meaningless in practice] by "a fixed minimum percentage of its revenues determined by law". And the phrase "in proportion to the population distribution in all parts of the country" should be replaced by "in all parts of the country, with under-developed areas receiving more than in proportion to their population size". This latter formulation embodies the principle of equalization, i.e. of solidarity between the more and less privileged provinces. This is desirable to complement the distribution of the petrodollars to only the governorates that produce or refine oil. – These two recommendations assumes that this clause applies to the Accelerated Reconstruction Development Program (ARDP) funds, not the petro-dollars.
- Clause 114-1. This clause, allowing governorates a role in customs administration, should be repealed. The clause is in sharp deviation from international practices, for important reasons. It is presently (fortunately) not implemented.
- Clause 121-3. To this clause, on transfers to governorates, add: "The size of the total available funds, transparency, accountability and audit, and timeliness of the transfers, shall be regulated by law." That would fill in serious gaps in the present legislation (Law no. 21 of 2008).

2. Recommendations with respect to Law No. 21 of 2008 (as amended) (Chapter 2)

Constitutional reform will be a long-term project. Meanwhile, progress can and must be made in other respects. Law No. 21 of 2008 (amended in 2013) is likely to be amended soon as a consequence of Iraq's decentralization process. Articles 44 and 45 are to be rewritten entirely.

- Clause 44-1 should define the principle of "balanced development of different parts of the country" using the equalization principle, as suggested in § 2.1.2. It should also ensure that ARDP funds shall be shared partly based on deprivation, and shall not be earmarked for almost 100% for the investment budget.
- The most urgent need is a specification of revenue sources to be assigned to governorates, replacing clause 44-2. A proposal for that is presented in § 1.2 of Deliverable 4. Ideally, the decision on revenue assignment will be guided by estimates by the Ministry of Finance (MoF) for each Governorate of the spending amounts related to each of the eight functions to be decentralized, and the revenue amounts expected from the revenue sources to be devolved.
- As the next priority, minimum conditions to be met by governorate laws on their revenue sources are formulated in § 3.4.1 of Deliverable 4. This could become a new clause 44-2a (leaving the present clause 44-3 in its place).
- Article 45 on the High Commission for Coordination among the Provinces (HCCP) should be entirely redrafted. HCCP might be converted into a permanent platform for dialogue between the federal and governorate tiers of government. A proposal for that is presented in Deliverable 6.
- Iraq's legislation on Public Financial Management should be brought up-to-date to reflect the financial autonomy of the governorates.

Drafters of revenue legislation at Governorate level should

- in dialogue with federal government, explicitly identify the revenue sources to be assigned to governorates, as the core of the law required by clause 122-2 of the Constitution;
- on a permanent basis, learn from each other's documents and practices.

Both purposes would be served by the establishment of an Association of Governorates, and/or a permanent Commission on Inter-Governmental Financial Relationships.

Revenue policy makers at the Governorate level should adopt a Public Finance Law taking into account the observations made in § 2.2. They should avoid introducing nuisance taxes, avoid taxes that discriminate between sectors of activity, and make proper impact assessments before translating policies into legislation. Revenue policy units should be learning organizations conducting regular policy evaluations.

3. Revenue of municipalities (Chapter 3)

Law No. 130 of 1963 on the Revenues of Municipalities should be rewritten completely. Garbage collection fees, sewerage fees, zoning fees, municipal betterment fees, encroachment fees, parking fees, market fees, and rent for the use of municipal property are among the revenue sources to be explicitly assigned to municipalities. Law No. 130 does not mention any of these. The revenue sources it assigns to municipalities have mostly negligible revenue potential, with the exception of construction permit fees (whose rates are presently extremely low) and business license fees (which require an updated classification of sectors of economic activity, a revised rate schedule, and an extension of the validity of a business license beyond one year). The law is too short in many ways, in view of the absence of the power of municipalities to issue municipal by-laws; definitions of taxpayers and of payment deadlines, provisions for statutory interest; enforcement provisions; even very limited powers for municipalities to determine tax and fee rates (like adjusting dinar amounts for inflation); and clear references to other laws.

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Abbreviations

A	Arabic version
ARDP	Accelerated Reconstruction Development Program
COSIT	Central Organization of Statistics & Information Technology (formerly called CSO)
CPA	Coalition Provisional Authority
CSO	Central Statistical Organization (presently called COSIT)
E	English version
GFS	Government Financial Statistics
GSP	Government Strengthening Project
HCCP	High Commission for Coordination among the Provinces
ID	Iraqi Dinar
ILGA	Iraq Local Government Association
IMF	International Monetary Fund
KRG	Kurdistan Regional Government
LGP	Local Governance Program
MoF	Ministry of Finance
PEFA	Public Expenditure and Financial Accountability (www.pefa.org)
PFM	Public Financial Management
UN	United Nations
USAID	United States Agency for International Development
VAT	Value Added Tax

Introduction

The Scope of Work specifies "Legal and policy review", as the first deliverable and closely related to Task A, which is specified as follows.

> "Background reading and meeting with GSP/Taqadum Budget Specialists to understand the scope of work and context.
>
> 1. Review Law 21 and its amendments to understand the provincial power law, with specific focus on Articles 44 and 45.
> 2. Review the project's report on the Recommendations on the Transfer of Fiscal Authority.
> 3. Review the project's Working Paper on the Proposed Financial Procedures after Implementation of Article 45 of Law 21 as amended.
> 4. Read the World Bank Report on Fiscal Decentralization and Sub-National Public Financial Management in Iraq.
> 5. Review Law 130 of Municipal Revenue.

This report, while responding to this, in order to obtain a better perspective, takes into account a number of additional legal documents and policy analyses, such as the Constitution of Iraq from 2005 (§ 1.1); and some other studies and books by the International Monetary Fund (IMF), the World Bank, UN Habitat, various projects funded by USAID, and others (§ 1.3). The reviews of these documents are arranged in three chapters:

- Part 1: sub-national government revenue in general, without exclusive focus on either governorate revenue or municipal revenue (covers item 4);
- Part 2: governorate revenue (covers items 1, 2 and 3);
- Part 3: municipal revenue (covers item 5).

This arrangement is somewhat chronological: the two key sections 1.1 and 1.2 of chapter 1 and some of the items in § 1.3 are from the period 2005-2007, while in Part 2 they are from 2008 and 2015. The smaller chapter 3 of this report reviews the Law on Municipal Revenue (Law No. 130 from 1963), which (after proper amendments) may be implemented again in the (not-so-near) future.

The other deliverables under the assignment include the following:

Deliverable 3: Review of the present systems of fiscal transfers to local governments, with actionable recommendations for future reform;
Deliverable 4: Review of the current assignment of revenue sources (taxes, user fees, and other charges) to local governments or higher tiers of government;
Deliverable 6: Detailed, sequenced, prioritized plan to enhance existing local revenues.

This review will take these deliverables into account and minimize overlaps with them. That means that the present report will avoid (to the extent possible) dealing with transfers or with revenue assignment. Whenever these occur in the legal documents, references will be made to the following appropriate deliverables:

- Deliverable 3 for Constitution 112-1 and 121-3;
- Deliverable 4 for Constitution 28-1 and 110-1 as well as Law No. 21 of 2008 clause 44-2;
- Deliverable 6 for Constitution 106.

Finally, the Annex contains an English translation of Law no. 130 from 1963 the Revenue of Municipalities (as amended), a document of which the existing English translation[1] is based on the outdated original version and contains too many flaws.

[1] http://pdf.usaid.gov/pdf_docs/PNADL281.pdf, pp. 29-34

1. Sub-national government revenue in general

1.1 Provisions in Iraq's Constitution (2005)[2] on sub-national revenue

This section presents the articles of the Constitution that are relevant for the revenues of sub-national governments. Some of them will be revisited in Deliverables 3 and 4 on fiscal transfers and revenue assignment respectively; others are commented upon in § 1.2 and 1.3 below. Therefore not all of these articles are reviewed here exhaustively.

Article 19-9. Retroactivity

"Laws shall not have retroactive effect unless stipulated otherwise. This exclusion shall not include laws on taxes and fees."

This language is there probably with the good intention of preventing retro-active taxation. But the unfortunate formulation also prohibits a law providing a tax amnesty. That is undesirable, because sometimes a tax amnesty is a good policy. The revenue sources presently assigned to the municipalities have not been administered since 2003; most of the amounts concerned are negligible but the business license fees of 10% and 5% of rent are not. Property tax, presently administered by the federation, may also be a concern. The fear of having to pay for 12 or more years at once gives citizens an incentive to be non-compliant and go underground.

Recommendation. Replace "This exclusion shall not include laws on taxes and fees." by "This exclusion shall not include laws imposing new or higher taxes and fees."

Article 28. Requirement of Law for Fees

"First: No taxes or fees[3] shall be levied, amended, collected, or exempted, except by law.
Second: Low income earners shall be exempted from taxes in a way that guarantees the preservation of the minimum income required for living. This shall be regulated by law."

The first clause is the international standard (protecting citizens against their governments by forcing the latter to involve their representatives, parliament) with respect to taxes. However, inclusion of fees is not standard. The constitutions of most countries do not require that fees collected by government are legitimized by a law. The following are examples:

- Brazil (art. 150 clause 1): "Without prejudice to any other guarantees ensured to the taxpayers, the Union, the states, the Federal District and the municipalities are forbidden to: (I) impose or increase a tribute [i.e. tax] without a law to establish it".
- Indonesia (art. 23 clause 2): "All government taxes shall be determined by law."
- Iran (art. 51): "No form of taxation may be imposed except in accordance with the law. Provisions for tax exemption and reduction will be determined by law."
- Japan (art. 30): "The people shall be liable to taxation as provided by law."
- Jordan[4] (art. 111):

[2] In Arabic: www.wipo.int/wipolex/en/text.jsp?file_id=244219;
in English: www.refworld.org/pdfid/454f50804.pdf; www.iraqinationality.gov.iq/attach/iraqi_constitution.pdf; www.wipo.int/wipolex/en/text.jsp?file_id=230000
[3] The World Bank draft report (2007) in Annex 1.2 has "fines". That is a misunderstanding.
[4] Arabic: www.ces.es/TRESMED/docum/jor-cttn-ara.pdf

لا تفرض ضريبة او رسم الا بقانون ولا تدخل في بابهما انواع الاجور التي تتقاضاها الخزانة المالية مقابل ما تقوم به دوائر الحكومة من الخدمات للافراد او مقابل انتفاعهم باملاك الدولة

"No tax or duty may be imposed except by law. Taxes and duties shall not include the various kinds of fees which the Treasury charges in respect of services rendered to members of the public by Government Departments or in consideration of benefits accruing to them from the State Domain. (…)"

- Nepal (art. 89): "No tax shall be levied and collected except in accordance with law."
- New Zealand (art. 22): "It shall not be lawful for the Crown, except by or under an Act of Parliament, (a) to levy a tax…"

In all these cases, no fees are mentioned. Exceptions to this tend to come from countries in Iraq's neighborhood.

- Kuwait (art. 48): "Payment of taxes and public imposts (Arab. التكاليف العامة *al-takālīf al-ᶜāmah*) is a duty in accordance with the law which regulates exemption of small incomes from taxes…"
- Syria[5] (art. 41):

أداء الضرائب و الرسوم و التكاليف العامة واجب وفقاً للقانون

"The payment of taxes, fees and public duties is an obligation in conformity to the law".

True, the present formulation of Constitution 28-1 prevents implicit taxation by fees that are far above cost-covering level, or without individual benefits in return. Certainly this is a concern in Iraq's governorates. But it must be feared that the obligation of having a federal plus local law in place for all fees is too much of a legislative burden on some of the concerned jurisdictions. This would be an obstacle to the sub-national collection of fees (like garbage collection fees, sewerage fees, zoning fees, betterment fees, encroachment fees, parking fees, and entrance fees to museums, zoos and parks, all of which are not yet mentioned in Law No. 130 of 1963 on municipal revenue) and therefore to sub-national service delivery. The alternative way to address this is outlawing all fees that are not accompanied by the provision of services to persons, or whose rate is not in proportion to the costs of those services (see Deliverable 4). Another option would be the procedural requirement in the constitution of Bulgaria, article 141, clause 4:

"The municipal council shall determine the size of local charges by a procedure, established by law".

With respect to clause 28-2, its spirit requires that low-value properties are exempt from real property tax. This would be a good policy, from the point of view of both effective and efficient revenue generation, and of social justice. But taken literally, it requires sub-national governments to have information about the income levels of their taxpayers. This will not happen any time soon.

Recommendation. Replace the word "fees" in Constitution 28-1 by a provision in Law No. 21 of 2008 outlawing the charging of fees without service provision or procedures, and

English: www.kinghussein.gov.jo/constitution_jo.html; www.representatives.jo/pdf/constitution_en.pdf

[5] http://emediatc.com/PublicFiles/File/%D8%AF%D8%B3%D8%AA%D9%88%D8%B1%20%D8%A7%D9%84%D8%AC%D9%87%D9%88%D8%B1%D9%8A%D8%A9%20%D8%A7%D9%84%D8%B9%D8%B1%D8%A8%D9%8A%D8%A9%20%D8%A7%D9%84%D8%B3%D9%88%D8%B1%D9%8A%D8%A9%20%D9%84%D8%B9%D8%A7%D9%85%202012.pdf

requiring fee rates to be based on the costs of the services.

Article 106. Audit and Appropriation Commission

> "A public commission shall be established by a law to "audit and appropriate" federal revenues. The commission shall be comprised of experts from the federal government, the regions, the governorates, and its representatives, and shall assume the following responsibilities:
> First: To verify the fair distribution of grants, aid, and international loans pursuant to the entitlement of the regions and governorates that are not organized in a region.
> Second: To verify the ideal use and division of the federal financial resources.
> Third: To guarantee transparency and justice in appropriating funds to the governments of the regions and governorates that are not organized in a region in accordance with the established percentages."

Audit is essential for a good system of inter-governmental transfers. Current practices in other countries have shown that without accountability, billions of IDs might be embezzled without a trace. This applies in particular in a situation where either MoF or governorates are non-transparent on their finances; and even more so if both of them are non-transparent. Yet, there are questions such as:

- Was it necessary to establish a separate commission? Could it not be done by Iraq's Federal Board of Supreme Audit (BSA)[6]? There may be good answers to this, if the commission will have responsibilities for policy advice. But that is not clear.
- There is a translation issue in the first sentence. The Arabic version says لمراقبة تخصيص الواردات الاتحادية *li-murāqabah takhṣīṣ al-wāradāt al-ittiḥādiyah* "to monitor (or: supervise, inspect) the allocation of the federal revenues". So, the commission must monitor the allocation, but not allocate itself – which is normal, as this should be done by the minister who is held responsible by parliament.
- Is the work of the commission limited to transfers (as in clauses 1 and 3), or does it also comprise revenue assignment? That depends on the meaning of "federal financial resources" in clause 2.
- This clause 2 starts with التحقق من الاستخدام الامثل "verification of the ideal use", but does that mean policy advice to the minister(s) responsible for sub-national government revenues on the ideal use, or just auditing?

Cravens and Brinkerhoff (August 2013; p.11)[7] suggest that the commission would have responsibilities for policy advice:

> "…For instance, in late 2007, LGP [the USAID Local Governance Project] II, working through a then-informally organized Iraqi Local Government Association (ILGA), persuaded the MoF to hold its first ever budget hearing between the ministry and elected provincial officials on the draft 2008 Annual Budget Law. Following the successful conduct of the hearing, the advisors developed a policy document emphasizing tax- and revenue-sharing that they presented to the ILGA in August 2008. They then helped the association draft a bill, which would have established the Article 106 public commission. Although it was presented to the COR [Council of Representatives], that bill was never adopted[8], and the commission (like the Federation Council) was not formed. In February

[6] www.d-raqaba-m.iq/pages_en/leader_e.aspx; https://en.wikipedia.org/wiki/Commission_of_Integrity_(Iraq)
[7] https://www.rti.org/pubs/OP-0015-1308-Brinkerhoff.pdf
[8] See http://content.lib.utah.edu/cdm/ref/collection/qip/id/154 for comments on one of the drafts.

2008, the ILGA and LGP II advisors held an intergovernmental fiscal relations conference in Najaf to try to build a constituency for reform, but made little progress. The national budget remained solidly under central control."

Presently the situation is the same: there is no law in place, so article 106 has never been implemented. It is good international practice, and highly necessary in Iraq, to have a permanent platform for dialogue between sub-national governments, federal government (MoF and the ministers responsible for governorate affairs and municipal affairs), and public finance experts from academia. They will give advice to the ministers, which is non-binding but which, if the commission establishes a good reputation for expertise, objectiveness, and non-partisanship, will rarely be overturned. Examples of legislation for such platforms abound. Some countries have even enshrined the provisions in their constitution itself. Some countries have separate laws, commissions, and funds for 1) provinces/states and 2) municipalities; other countries combine them to avoid fragmentation. In Iraq, the High Commission for Coordination between Provinces (HCCP), established by article 45 (as amended in 2013) of Law No. 21 of 2008, may grow into such a commission. This subject will be taken up again in Deliverable 6, the plan for sub-national revenue enhancement.

Article 110. Fiscal Policy

"The federal government shall have exclusive authorities in the following matters:
(…)
Third: Formulating fiscal and customs policy; (…)"

What is the meaning of السياسة المالية *al-siyāsah al-māliyah* "fiscal/financial policy"? It does not mean that the collection of taxes would be an exclusive prerogative of the federal government, because of the following:

- Law No. 165 of 1964 on the Administration of the Municipalities in clause 3-2 states that a municipality is a legal entity that تستوفى الضرائب والرسوم والاجور وفقا لاحكام القوانين "levies taxes, fees and charges according to the provisions of the laws";
- Law No. 21 of 2008 states in clause 22-1: "Each administrative unit … may collect taxes, duties, and fees in accordance with the federal laws", and in clause 45-1, last phrase: "…whereby the role of ministries shall remain in planning general policy";

Nor should it mean that all powers to define the base, the rate, the payers and the exemptions of sub-national taxes and fees should be defined by national government alone. That too would deviate from international standards for important reasons such as accountability (see the introduction of Deliverable 4). Hopefully it means, with respect to sub-national revenue, the exclusive power to determine revenue assignment, and other aspects of a general policy framework such as criteria which a sub-national revenue law should meet (see the last section of Deliverable 4). This could be ensured by a constitutional amendment inserting language at the proper place (say, article 122) to the following effect.

Recommendation. The Constitution should state that sub-national governments, notwithstanding article 110, clause 1, shall have powers to determine policies and local legislation with respect to the revenue sources assigned to them, subject to national legislation.

The same clause 110-1 also mentions "customs policies" as an exclusive power of federal government. Rightly so, however, customs administration is a shared responsibility, according to clause 114-1.

Article 111. Oil and Gas

> "Oil and gas are owned by all the people of Iraq in all the regions and governorates."

The World Bank draft report (2007) (discussed in § 1.2 below) in its Annex 1.2 presents this under the header "own tax assignments"; but that would be a narrow interpretation, limited to taxation. No doubt it concerns all oil revenues, including all non-tax revenues like royalties and profits.

Article 112 (1). Management of Oil and Gas

> "First: The federal government, with the producing governorates and regional governments, shall undertake the management of oil and gas extracted from present fields, provided that it distributes its revenues in a fair manner in proportion to the population distribution in all parts of the country, specifying an allotment for a specified period for the damaged regions which were unjustly deprived of them by the former regime, and the regions that were damaged afterwards in a way that ensures balanced development in different areas of the country, and this shall be regulated by a law."

Much has been said about this article, because of the great importance of oil, and most of it is critical.

First, its overlap with article 121(3) which speaks about the allocation of "an equitable share of the national revenues" (according to different criteria than those mentioned here). There is overlap between articles 112(1) and 121(3) because in Iraq about 90% of all "national revenue" (121(3)) is oil revenue (112(1)).

Second, the phrase "its revenues", which cannot mean "all revenues", because then federal government would never have enough for its core functions even in the most extreme form of decentralization. Therefore the phrase lacks specificity, which could have been added by a phrase like "a fixed minimum percentage determined by law".

Third, the phrase الحقول الحالية "present fields", which refers to fields in operation in late 2005. Jawad (2013, p. 22) (the same view is expressed by E. Ahmad in UN Habitat (2011; p. 30)):

> "Another problem relates to the absence of a law to regulate the exploration of oil. Baghdad and Erbil have been at an impasse on the issue for the past three years. The central government claims that it is the sole power with the right to sign oil concessions in Iraq, according to Article 112, 1, while the Kurdish Regional Government says it holds this right, according to the same article. Ironically they are both correct due to the ambiguity of the article, which grants the federal government authority to explore the 'present fields', but gives the regional government the right to explore and sign agreements for any new fields."

Fourth, the phrase "in proportion to the population distribution in all parts of the country", which is at odds with the phrase (in the very same article) "in a way that ensures balanced development in different areas of the country". The most obvious interpretation of the latter is that under-developed areas would receive more than in proportion to their population size.

Fifth, the fact that the "fair manner in proportion to the population distribution in all parts of the country" is presently not applied with respect to the petro-dollars. The constitutional requirements are met only if the ARDP funds (which also have to meet the conditions of 121(3)) can be considered to be the oil revenue that 112(1) is speaking of. Furthermore, proportionality to population size may not be the best way to promote national cohesion.
Other principles are:

- the derivation principle (which means that oil revenues benefit those governorates where the oil is produced or refined) on the one hand (as presently under item 8 of clause 44-2 of Law No. 21 of 2008, as amended), and
- the equalization principle (which means that underdeveloped governorates receive more per person than the more developed governorates) on the other.

Sixth, the undefined "damaged regions" and the yet-to-be-defined "specific period". This seems to concern:

- the Kurdistan region, which between 1991 and 2003 received no federal funding, and survived on its own resources plus aid from the international community, and
- the south, with similar issues.

It is reported that the Ministry of Planning did not succeed in estimating the damage. This report must necessarily leave this issue, which is unique to Iraq, aside.

The final phrase of clause 1 calls for a law, the draft Oil Law or Hydrocarbon Law, which has been drafted but has not yet been passed. See in particular bishop and Shah (December 2008) (§ 1.3.5, below). Much of the battle is about the origin (or derivation) principle versus proportionality or even the equalization principle. The likely political outcome is that two funds of different sizes will co-exist, the petro-dollars and the ARDP fund, which will be allocated on the basis of different principles.
All these matters have received much, even disproportionate attention. Deliverable 3 on fiscal transfers will revisit them.

Recommendations. In clause 112-1, the word "its revenue" should be replaced by "a fixed minimum percentage of its revenues determined by law". And the phrase "in proportion to the population distribution in all parts of the country" should be replaced by "in all parts of the country, with under-developed areas receiving more than in proportion to their population size".

Article 114. Shared Competencies-Customs

"The following competencies shall be shared between the federal authorities and regional authorities:

First: To manage customs, in coordination with the governments of the regions and governorates that are not organized in a region, and this shall be regulated by a law. (…)"

This is (although the World Bank draft report (2007) Annex 1.2 quotes it without a hint of criticism) a stunning deviation from international standards. If this clause would have been put into practice (fortunately it is not), it would have required considerable effort to get the situation normalized. Although indeed customs administration may to some extent be

decentralized[9], it is important that procedures remain uniform and enforcement equally strong for all border crossings, to avoid loopholes in the country's customs controls. This can be guaranteed only under the single leadership of federal government. Furthermore the involvement of some governorates (namely those with border crossings) in customs collection will take place only if they share in the revenues. However customs revenues are not divided equally over the governorates: some governorates (Babil, Dhi Qar, Diwaniyah, and Karbala) do not have borders with other countries, or do not have border crossings on those borders or do not have border crossings with a significant amount of trade (Najaf). Therefore customs revenue is an unsuitable revenue source to be shared with the governorates. Iraq's customs Reform and Modernization Strategy (February 2014)[10] does not mention a role for governorates with a single word, in support of the view that governorates do not add value to customs administration. Probably article 115:

> "With regard to other powers shared between the federal government and the regional government, priority shall be given to the law of the regions and governorates not organized in a region in case of dispute."

applies to customs administration, and this will completely paralyze the same, as no uniform arrangements can be made.

A legal technicality is the fact that the introductory sentence of 114 speaks of "federal authorities and regional authorities" only, without mentioning the governorates. However the clauses 1, 3, 5, and 6 do mention them, so that only the clauses 2, 4, and 7 may be affected by this apparent omission.

Recommendation. Clause 114-1 should be repealed. As it was never put into practice, the governorates do not have to be compensated for this by additional transfers and/or reassigned revenue sources of equivalent size.

Article 121 (3). Sharing National Revenue

> "Third: Regions and governorates shall be allocated an equitable share of the national revenues sufficient to discharge their responsibilities and duties, but having regard to their resources, needs, and the "percentage" [size] of their population."

This clause is a bit hidden, in Chapter One on Regions, not in Chapter Two on Governorates. In time it may find a better place.

Presumably it refers to the ARDP funds (see the first half of Deliverable 3), which are not governed by a law but by MoF regulations, which weakens the protection for the finances of the governorates. Whereas clause 112-1 asks for a law, this clause 121-3 does not ask for a law, which is inconsistent. Presently governorates are entirely without protection or guarantee: the equitable share may be reduced to negligible size. In this way it is hard for governorates to plan for capital projects taking more than one year.

It is a positive element that it formulates the principle of vertical equity applying between tiers of government. If the legal responsibilities of governorates increase, necessarily the "equitable

[9] Richard Allen, Richard Hemming, Barry Potter (Eds.): *The International Handbook of Public Financial Management* (2013), p. 488.
[10] http://customs.mof.gov.iq/sites/default/files/IRAQ%20Customs%20Strategy_02.27.pdf

share of the national revenues" that is sufficient must increase as well. Article 122-2 also formulates this principle.

Another good aspect is the word حاجاتها *ḥādjātihā* "their needs", in conformity to the equalization principle and international best practice. If "resources" is interpreted not as "actual revenues" but as "revenue potential", and "their needs" as "spending needs", we have the internationally usual basis for equalization, namely the gap between spending needs and revenue potential for each governorate. This word is presently not implemented: deprivation or poverty plays no rule in the ARDP formula. But it would not be difficult to do so, as the COSIT measures and publishes the required variables for each governorate.

Recommendation. Clause 121-3 should require that the size of the funds, transparency, accountability and audit, and timeliness of the transfers, are regulated by law. In due time this clause should be moved to Chapter Two on Governorates.

Article 122. Administrative Decentralization

> "Second: Governorates that are not incorporated in a region shall be granted broad administrative and financial authorities to enable them to manage their affairs in accordance with the principle of decentralized administration, and this shall be regulated by law. (…)
>
> Fifth: The Governorate Council shall not be subject to the control or supervision of any ministry or any institution not linked to a ministry. The Governorate Council shall have independent finances."

Clause 122-2 is probably the constitutional basis for Law No. 21 of 2008, which is reviewed in § 2.1 of this document. Its main flaw is that it does not address revenue assignment. But it also does not regulate, at the governorate level, a) borrowing, b) the acceptance of grants from donors, c) the selling of government-owned assets, d) banking arrangements, e) payment procedures, f) the admissibility (or otherwise) of external revenue collectors, g) the publication of financial reports, and h) the internal audit function with respect to revenue. In the field of PFM it is actually "embryonic".

Clause 122-5 affects only the governorate councils, but not the governorates. Governorates that are "bankrupt", i.e. are in a financial emergency, will be put under supervision of the federal government, that will bail them out, but will also deal with the root causes of the problems to avoid repetition. It would be good if Law No. 21 of 2008 would address the supervision of governorates in financial distress.

Article 123. Delegation

> "Powers exercised by the federal government can be delegated to the governorates or vice versa, with the consent of both governments, and this shall be regulated by law."

This allows revenue sharing arrangements, where federal government collects personal income tax (permanently), or property tax (temporarily, for a number of years), in exchange for a moderate fee (a percentage of revenue collections) to reward the Ministry of Finance for its collection efforts. Safeguards will be needed for:

- accountability (there have to be reports explaining the amounts of revenue collected, and specifying assessments, late payment penalties, payments of arrears, stocks of arrears, etc., broking down by geographical units);
- the timeliness of transfers; and
- penalties for late transfers;

These safeguards can indeed best be laid down in law.

The subjects not mentioned in the Constitution include the following two:

First, municipalities, in the sense of Law No. 130 of 1963 on the Revenues of Municipalities, and Law No. 165 of 1964 on the Administration of the Municipalities. Section 5, Chapter Four on, allegedly, الادارات المحلية "local administrations", only contains art. 125 about قوميات *qawmiyāt* nationalities, which is something else. Hence, the constitution does not give the municipalities any financial guarantees. This should be kept in mind when the decentralization process will be extended to municipalities as well. In that case municipalities should have the right to collect taxes and fees subject to national legislation, and should be entitled to financial support from national government to carry out their responsibilities.

Secondly, borrowing by sub-national governments. The World Bank draft report (2007) in its Annex 1.2 rightly brings up this subject: "No specific mention of borrowing, unless considered part of Article 110 concerning that federal government has exclusive authority in formulating 'fiscal and customs policy.'" Borrowing by sub-national governments is in almost any country restricted by federal government, to avoid borrowing for wasteful or frivolous spending, when federal government will be expected to bail out the jurisdiction that borrowed itself into trouble. The restrictions could be:

- an obligation to provide information to the Ministry of Finance, like multi-year (3 or 5 year) capital plans;
- an obligation to inform the public (by advertisements) about the intention to borrow;
- special majorities in the Provincial Council to approve authorization, like majority of all members, or 2/3 of the members present;
- a limit on the aggregate liabilities (e.g. < 150% of revenue, or < 2% or 10% of assessed real property value), or on the annual costs of servicing the aggregate liabilities (interest plus amortization < 20% or 30% of (ordinary) (own source) revenues);
- restrictions on purposes for which money is borrowed (e.g. only public works including their operation, repair and maintenance; or the "golden rule" prohibiting borrowing to finance operational expenditure); or
- a prohibition to borrow from non-approved lenders (such as those not from foreign lenders, or only from a state-owned bank).

The sanctions could consist of a fine in the form of a forced deposit without interest in the account of the Ministry of Finance, for at most the amount of the loan attracted without approval, if the governorate attracts a loan without approval. This topic does not require amendment of the constitution. It was addressed in CPA Order No. 95 of 2004[11], section 10 on Borrowings and Guarantees:

> "Governorates and regional governments may, upon notification to the Minister of Finance, raise funds through borrowings, and issue loan guarantees subject to the debt limit set in the annual budget law, and to the specific debt limit set for each entity under the

[11] www.iraqcoalition.org/regulations/20040604_CPAORD_95_Financial_Management_Law_and_Public_Debt_Law_with_Annex_A_and_B.pdf

apportionment approved by the Council of Ministers on a recommendation of the Minister of Finance. Regional governments and governorates shall submit by August 31st estimates of total outstanding borrowings, and borrowings to be raised in the forthcoming fiscal year for review and for approval by the Minister of Finance. Regional governments and governorates will report to the Minister of Finance monthly on the amount of outstanding borrowings raised and loan guarantees issued."

This order is still in force, which in itself is a good thing, as it provides a basis, but it contains no sanctions. The Ministry of Finance should evaluate the order with participation by the governorates, and consider whether additional restrictions are desirable.

1.2 Review of World Bank: *Fiscal Decentralization and Sub-National Public Financial Management in Iraq* (22 May 2007)

This sizeable (160 page) document, now over eight years old, was a draft "not yet for circulation or distribution". Its contents are often quite useful. Yet it is not possible to locate this draft, or a more final version, on the internet. And it is not referred to in the World Bank's recent publication *Republic of Iraq Public Expenditure Review: Toward More Efficient Spending for Better Service Delivery* (2014), which at its page 56 contains a box on "Fiscal Decentralization and Intergovernmental Fiscal Transfers in Iraq". All of this makes it desirable to quote it more extensively than usual. That will happen here in this report, but to some extent also in Deliverable 4, the report on revenue assignment.

While this World Bank report quotes many sources, two relevant reports seem to have escaped its attention, namely Melhem and Nersesyan (April 2006) and Dunn (December 2006). These two USAID-sponsored documents are discussed in §§ 1.3.2 and 1.3.3 of this deliverable. It mentions IMF working paper WP/05/69 (§ 1.3.1) in the list of references, but quotes it nowhere.

What in the document is still relevant, and what has been overtaken by events? In 2007 the Constitution of late 2005 was 1½ year old. The relevant legislation was still CPA Order 71 of 2004[12]. Law No. 21 of 2008 had not yet been introduced, let alone amended; it was in the latest stages of been drafted (pp. i, 74, 77). It was a time of transition in the legal regime. Possibly for that reason, the report does not present a detailed legal review of either.

Matters related to the Kurdistan Regional Government (KRG) receive much attention in the report (Chapters 2, pp. 22-45, and 3, pp. 46-71; apparently a priority at the time), as did matters related to governorates. Municipalities did not have their own chapter, and although municipalities are mentioned frequently in scattered places (like pp. 6, 17, 73, 76, 80, 83, 99), empowering them is not a matter of urgency.

Several parts (e.g. Annex 1.3) of the document present, in a valid way, the general principles of fiscal decentralization, without always applying them to the context of Iraq.

Revenue matters do not have their own chapter. They are concentrated in the introductory Chapter 1 entitled "Iraq's Emerging Fiscal Decentralization" (pp. 1-21), and the first half of Chapter 4 entitled "Public Finance and Structures in Iraq's Provinces Not Incorporated as Regions" (pp. 72-86). Chapter 5 (pp. 87-112) describes Public Financial Management (PFM) in the governorates following the Public Expenditure and Financial Accountability (PEFA) methodology, but the revenue indicators PI-13, PI-14 and PI-15 get almost no attention; page 99 reports for two of the three: "information not available".

The following of the report's observations and insights are worth noting (with a few comments added between square brackets).

- p. 1 "…revenue distribution issues will inevitably color many debates concerning fiscal decentralization". This concerns Deliverable 3.

[12] www.iraqcoalition.org/regulations/20040406_CPAORD_71_Local_Governmental_Powers_.pdf

- p. 2 “The Governorate Councils have also been assigned with an annual block grant (the development and reconstruction funds (ARDP), approaching USD 2 billion in 2006 and 2007), allocated on the basis of provincial population.”

- p. 3 “Linked [to the delicate Hydrocarbons Law] appears to be the passage of a Revenue Sharing Law which would clarify the distribution of fiscal resources derived predominantly for oil. To-date, the transfers to KRG and the investment allocations for prioritization by the Governorate Councils are regulated as part of the annual budget process, rather than fiscal decentralization laws.” This highlights the need for long term rules, instead of ad hoc annual decisions on the size of the funds (Deliverable 3).

- p. 4 “Devolved expenditures at this stage strictly refer to the development and reconstruction funds (ARDP) and small recurrent allocations the GCs receive for sitting fees.”

- p. 6 “The 2005 constitution sets out a broad vision for Iraq’s fiscal decentralization. (…) However, for implementation to work, careful attention needs to be paid to how formal and informal systems and practices in Iraq currently work. Many implementing rules and regulations are still required.”

- p. 8 “Prevailing revenue assignments assign just under eighteen percent of government expenditures to sub-national government in 2007. [This includes KRG] (…) The bulk of funds allocated to Governorate Councils are for investment purposes, constitute 5.2 percent of sub-national expenditures. These are based on a nominal amount (ID 3 billion [must be 3 trillion…] in 2006 and 2007), which is allocated across provinces based on their population share.” The table at p. 8 of the World Bank draft report shows a budgeted amount of ID 2.822 trillion for transfers for Development/Capital spending in 2006.

- p. 10 “While the allocations for the provinces were ultimately fully released in 2006, actual execution was significantly lower. Through the middle of December, only about 40 percent of these funds had been disbursed. In a last minute measure, the remainder of these funds was transferred to the provinces in December, with the provision that these can be spent in 2007. While we turn to these issues in more detail in Chapter 4 and 5, it in effect already means that provincial structures are expected to four times as much in 2007 as in 2006 (ID 3 plus 1.8 carryover from 2006 compared to 1.2 executions.)” This is highly important: there must be legal guarantees for the timeliness of the transfers (Deliverable 3).

- p. 10 “Sub-national financing should ideally follow expenditure functions, a principle which remains to be elaborated on in Iraq. Many of the public debates around fiscal decentralization have focused on the size of transfer to KRG, [and] the potential allocation of oil revenues either on a derivation or formula basis (notably on a population and deprivation basis).” (Deliverable 3). It is here, on pages 14 and 116 the subject of allocation on the basis of deprivation is brought up, but only briefly and not specifically.

- p. 17 “The Commission [for Taxes, which is part of the Ministry of Finance,] also appears to assist in the collection of certain taxes flowing to the municipal administrations.”

- p. 17 “Self-funding municipal taxes currently fall under the remit of the Ministry of Municipalities and Public Works. Municipal administration are assigned, largely under the

municipal law of 1963, building duties (a nominal duty on building area), slaughterhouse duties (set nominal fees on particular types of livestock), advertisement duties, excise on cigarettes and tobacco (collected by federal administration, as shared with MAs [Municipal Authorities] by half), professional duties (based on 10 percent [of] rental values of their workplaces), some producer duties (based on 5 percent [of] rent […]). The MAs are owners of local assets/properties, which can generate some usage/rental fees. This is in contrast to the Governor's Offices and PC's [Governorate Councils], which do not formally own local assets. Article 16 of the 2007 Budget Law notes that "The Minister of Municipalities and Public Works is authorized to reallocate the budgeted funds of a self-funding municipality to execute needed services."

- p. 18 "In the interim, the emphasis on the financing of sub-national government will be on intergovernmental transfers. [And the same applies to the emphasis in this World Bank draft report: little is said about revenue assignment.] At present Iraq does not share oil based revenues on a derivation basis. A number of normative arguments speak against assigning natural-resources [p. 19] to sub-national, owing to both their volatility and local concentration. However, a number of countries such as Malaysia, Nigeria, and Indonesia have maintained sub-national sharing. In turn, some form of equalization based transfers may be necessary to address pressures to further devolved revenues."

- p. 75 "Ministry of Municipalities and Public Works work together with municipal councils to collect municipal taxes."

- p. 76 "At present the GOs [Governor's Offices] do not collect own source revenues (save for a limited number of administrative fees), which revert to the central treasury. The latest available Draft Governorate Law however envisions that governorates are assigned revenues through additional laws." However, the legal provisions in Law no. 21 of 2008 turned out not to be enough to enable governorates to collect any substantial own-source revenue. This is the main shortcoming of this World Bank draft report: not being specific on the subject of revenue assignment.

- p. 78 "Order 71[13] clearly provides authority to legislate on revenue raising issues." Indeed. But it did not mention on which revenues, and the World Bank draft report is downplaying that. Without that issue, revenue assignment, being addressed, there is little point in calling this provision "clear". Again: the draft report failed to press the issue of revenue assignment.

- p. 79 Box 4.5 gives a listing of "Governorate Financial Resources and Competencies, Draft Governorate Law". It is similar to the present listing of financial resources in clause 44-2 of Law No. 21 of 2008, which is not specific enough – and the World Bank draft report fails to point that out.

- p. 79 "…However Babil, Karbala, Najaf and Baghdad have more complex administrative developments as described in the report on management of ARDP funds (USAID/RTI LGP2 2006)[14]. In addition, some GCs have appointed tax collectors as identified in the

[13] www.iraqcoalition.org/regulations/20040406_CPAORD_71_Local_Governmental_Powers_.pdf

[14] This is a reference to USAID/RTI LGP 2: *Report on LGP2 Training on ARDP Funds and Utilization of ARDP Funds by GCs/Institutional Measures for Fund Utilization*, September 2006. A document that seems unavailable on the internet.

presentation on revenue assignment (see USAID RGP2)[15]. While revenue raising powers by GCs are unclear [indeed], nevertheless some of them exercise these powers. Many GCs in the South collect some fees and customs surcharges. The basic taxation powers [the abstract power to tax; but no powers with respect to specific taxes] are also in CPA Order 95, the Financial Management Law and Public Debt Law. MoF's responsibilities are also explained in that document."

- p. 88 "No well-defined system of local own source taxation (PI13 – PI15)[16] [correct!]; GC/GO depend on disbursements though MinFins GTOs [Governorate Treasury Office]; no formal system of sub-national borrowing to-date (PI17)." This latter deficiency is a logical consequence of the former.
  ""Self-financing" MOs at district level are earmarked real estate taxes, but with role of National Taxation Authority (PI13-15)". This remark is interesting but cryptic.

- p. 113: "How should sub-national governments be financed to meet expenditure expectations? Given Iraq's dependence on oil-wealth, special attention will need to be paid concerning how these resources are managed and allocated with respect to sub-national governments." Raising this question is necessary, but the report does not give a specific answer.

- p. 114 "Central and sub-national authorities will need to carefully manage political pressures to devolve more revenues in the absence of clear expenditure accountabilities and capacities for service delivery and public financial management." Now in August 2015 these concerns about accountability still exist, but revenues must be devolved nevertheless.

- p. 116 "264. **Since finance follows function, removing the allocation for the sovereign expenditures, a share of the transfers should fulfill the objective of vertical balance in the governorates.** Once, decisions regarding the assignment of expenditures has been clarified following the principles discussed above, transfers that allow the provision of the expenditure [must be] assigned to the governorates." True. But it should be pointed out that some of the expenditures will be operational spending, not investment spending. Therefore the restriction that almost all ARDP funds are earmarked for capital expenditure must be relaxed or entirely removed. Page 86 says that about 2% of the ARDP funds are now allowed for recurrent use. Presently this percentage for recurrent expenditure related to projects is 3%, 4% or 5%.

- p. 116 "265. **The equalization shares should move beyond population to a deprivation index.** This index can be based on measures of deprivation as evidenced by poverty and income data and social indicators, rather than historical deprivation which is hard to measure. [This seems to be a hint at the "damaged regions" mentioned in Constitution 112-1] Given that this would identify needs, the fiscal gap could then be fulfilled by a transfer. The data for this is being collected by COSIT and once this ready; the design of the transfer system should be based on a deprivation index." A good point for the reform agenda.

[15] This source cannot be traced either.
[16] These numbered PI indicators refer to the PEFA system, www.pefa.org.

The World Bank draft report presents no statistics, per governorate or for all of them combined, of a) total revenue or b) transfers received (ARDP, petro-dollar, or total). It cannot be said that it defined a clear agenda with respect to governorate revenues, with specific recommendations in particular the following key areas.

- Revenue assignment. Even in § 6.3 (p. 116), which should have covered this, it does not specifically address scenarios where some or all of property tax, property transfer tax, land tax, hotel tax, and parts of personal income tax are assigned to the governorates.
  (The report refers 16 times to "revenue assignment", but also five times to "tax assignment". Probably that is only a semantic, and hence minor, issue. The assignment of fees such as business license fees and vehicle license fees are definitely part of the problem.)
- Timeliness of the ARDP and petro-dollar transfers to the governorates (in view of the bad experience of 2006).
- Guarantees for the size, stability, and predictability of the ARDP fund. Relaxing the restriction that all of it should be earmarked for investment.
- Allocating the ARDP funds to some extent on the basis of deprivation in governorates.
- Further reforms of policy, legislation, and administration.

1.3 Summary of Chapter 1

Iraq's Constitution has, with respect to the revenues of sub-national tiers of government, some provisions that are good, and some that are unfortunate. The good ones should be implemented (this does not always happen), the bad ones amended (for which § 1.1 makes concrete proposals, but this will happen only in the long term).

Meanwhile progress can and must be made in other respects: Law No. 21 of 2008 should assign concrete revenue sources to governorates, ARDP funds should be shared partly based on deprivation and should not be earmarked entirely for investment. The coexistence of petro-dollars and ARDP is practical and makes it possible to find a balance between the principle of derivation and the opposite principle of equalization.

2. Governorate revenue

2.1. Law No. 21 of 2008, and its amendments[17]

This Law from 19 March 2008 came into effect to replace CPA Order 71 of 2004, which in turn had replaced Law no. 159 of 1969[18]. Amendments took place on 9 March 2010 (these left articles 44 and 45 unaffected) and on 5 August 2013 (when articles 44 and 45 were fully replaced by articles 21 and 22 of the amendment law). It is about governorates not organized within a region only; the governorates of the region of Kurdistan never fell within its scope.

A re-organization of the law is advisable, given that Part III, entitled "Financial Resources", consists of just a single article (44) that affects financial matters, and Part IV, entitled "Final Provisions", contains article 45, which is of substantial importance.

2.1.1 Articles other than 44 and 45

Revenue-relevant provisions include the following.

Clause 2-6

> "The joint powers set forth in Articles (112, 113 & 114) of the Constitution, shall be administered in the coordination and cooperation between the federal and local governments and priority shall be for the Law of the Provinces not Organized in a Region in the event of a dispute between the two governments in accordance with the provisions of Article (115) of the Constitution."

This affects above all customs administration, mentioned in clause 114-1 of the Constitution, which was already discussed. If clause 114-1 will be repealed there will be no need to amend Law No. 21 at this point.

Clause 7-4

> "The public policy of the province and determining its priorities in all fields shall be developed by mutual coordination with the relevant ministries and authorities, and in the event of a dispute between the two, priority shall be to provincial council's decisions."

So with respect to revenue policy, each of the 15 governorates must coordinate with the federal Ministry of Finance, but in case of a dispute the governorate shall prevail. A clause like "subject to federal legislation" is conspicuous for its absence[19].

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[17] Arabic. The original version of Law No. 21 of 2008 is at www.iraq-lg-law.org/en/webfm_send/102.
The first amendment act was Law No. 15 of 2010, the second one was Law No. 19 of 2013, both hard to find on the internet.
The up-to-date version of the law, with the amendments, is available at http://iraq-lg-law.org/en/node/181.
English. A translation of the original version is at http://pdf.usaid.gov/pdf_docs/PNADN071.pdf, presented as "An Annotated text" from July 2008, and www.iraq-lg-law.org/en/content/provinces-not-associated-region-no-21-2008.
A consolidated version as per March 2011, "as amended by Law 15 of 2010 and Footnoted", is at http://iraq-lg-law.org/en/webfm_send/765 and www.iraq-lg-law.org/en/content/law-governorates-not-incorporated-region-footnoted.
A translation of the up-to-date version of the law is impossible to find on the internet.

[18] www.iraq-lg-law.org/en/node/1503

[19] See the critical comment at https://gulfanalysis.wordpress.com/2013/06/27/provincial-powers-law-revisions-elections-results-for-anbar-and-nineveh-is-iraq-headed-for-complete-disintegration

More familiar is the approach of article 22.

> "Each administrative unit shall have a juridical character and financial and administrative independence. In the performance of its functions, it may:
> First: Collect taxes, duties, and fees in accordance with the federal laws. (…)"

These are good formulations.

- Sub-national authorities are autonomous a) in the areas of their competence, and b) subject to national legislation. This is the international standard.
- Sub-national governments are given the power to tax, but (presumably, it could have been said more explicitly) only on the basis of federal legislation.

Article 41 says "The *qaḍā'a* administrator shall collect revenue in accordance with the law, and article 43: "The *nāḥiyah* administrator shall collect revenue in accordance with the law."

This is likely to create problems of dual subordination of revenue officers, who will be subject to the Director of Revenue in the governorate capital on the one hand, and to the administrators on the other.

2.1.2 Article 44

The first clause of article 44 concerns transfers to governorates.

> "Federal Budget allocations for the province in a manner sufficient to fulfil its duties and carry out its responsibilities, in accordance with the population "rate" [size], level of deprivation and to the extent that it provides balanced development for different parts of the country."

This mirrors (though not exactly) the language of Constitution 121-3, but not of Constitution 112-1 on oil and gas revenues, although the petro-dollars too are federal budget allocations. The intention may be for clause 44-1 to outlaw federal budget allocations that do not depend on population size and deprivation, and/or do not provide balanced development. But such a meaning would be un-constitutional: Constitution 112-1 trumps Law No. 28. An alternative interpretation is that "Some (not necessarily all) Federal Budget allocations for the province must be allocated in a manner sufficient…"

Clause 1 formulates the principles of vertical equity, of "funding follows function". It also formulates a form of the principle of equalization, but in wordings different from Constitution 121-3: there حاجاتها *ḥādjātihā* "needs", here المحرومية *al-maḥrūmiyah* "deprivation" and التنمية المتوازنة *al-tanmiyah al-mutawāzinah* "balanced development". Neither of the two formulations is presently implemented. ARDP funds are allocated on the basis of population size, but not of needs or deprivation.

Hamoody (2013) [20] points out that the phrase "in a way that ensures balanced development in different areas of the country" of clause 44-1 was copied almost exactly from Constitution 112-1 (on oil revenues), and criticizes the fact that such an important law as Law No. 21 spent

[20] Najed Hamoody Majeed: قانون التعديل الثاني لقانون 21 وإنعكاسه على الصلاحيات المالية للمحافظات دراسة تحليلية ("*The Second Amendment to Law No. 21 and its Repercussions for the Financial Powers of the Governorates – an Analytical study*"), September 2013, p. 11.

no further attention to the elaboration of this concept. An obvious interpretation of the phrase is the equalization principle: the transfers should contribute an equal percentage to the gap between spending needs and revenue potential defined for each governorate, and the law could make that explicit. In turn, "deprivation" could play a role in the formulas for both revenue potential (reducing it) and spending needs (raising them).

Recommendation. Clause 44-1 should provide a definition of the principle of "balanced development of different parts of the country" using the equalization principle.

The original version of article 44 contained an enumeration of the financial resources of the provinces including the following unspecific item:

> "Third: Revenues obtained from taxes, fees and local fines imposed in accordance with the Constitution and federal laws in force"

In 2010 this language was maintained. In 2013 it was replaced by sub-clause:

> "2-2 Taxes, fees and fines enforced in accordance with federal and local laws in force within the provinces."

Concrete revenue sources were never specified, so it was all without substance. This has always been the crucial shortcoming of Law no. 21 with respect to revenue: the absence of concrete revenue assignment in article 44. The annotated translation of 2011 observes:

> "Despite the clear grant of authority to receive proceeds from taxes, duties, or fines, to date, provincial councils and governors have been prevented from officially collecting them. Despite an advisory opinion of the Supreme Court, Number 16 of 2008, which interpreted the law as allowing provincial councils to impose taxes, that anticipated power has been consistently denied by Prime Ministers and the Ministry of Finance since the implementation of Law 21 and since sovereignty was returned in 2004. Consequently, there is no clear procedure for how to impose, collect, or spend local revenues. Moreover, the Ministry of Finance has placed impediments in the way of provinces that attempt to open provincial bank accounts."

Hamoody's review from 2013 (p. 14), in a similar vein:

> "…but the exercise of this power [of governorates to impose taxes] calls for a complete (integrated) tax system, first of all: defining the tax base, the tax rates, the exemptions, defining the tax payers, rules and methods of collection, information systems that will be adopted for the collection, and so on with respect to the administrative and financial matters associated with tax systems. Therefore the possibility of implementation seems complicated and impractical, at least at present."

It is Deliverable 4 that will take this matter forward and in its § 1.2 make a concrete proposal to assign a part of personal income tax, all property taxes, property transfer tax, the tax on touristic services of hotels as well as the "*maks*es" to the governorates. It will also address the minimum specifications that any governorate law on revenue should meet (§ 3.4.1).

Hamoody (p. 14) at this point makes yet another remark:

> "If these taxes and fees and fines imposed under federal laws, then how will the provinces retain their revenues? According to the laws of the Federal Financial Management all these revenues should be recorded as income for the federal treasury!"

He also argues (p. 16) that all the financial resources of the governorates, whether for operational or for investment purposes, should go in one account, for the sake of flexibility.

Recommendation. Iraq's legislation on Public Financial Management should be brought up-to-date to reflect the financial autonomy of the governorates.

Clause 44-2 enumerates in its other sub-clauses other revenue sources, in a way that is flawed in many ways.

Sub-clause 44-2-1 lumps together "service fees and investment projects executed", two dissimilar things.

Sub-clause 44-2-3 "Selling and renting movable and immovable state-owned properties" has the same flaw: sales generate non-recurrent (non-sustainable) revenues; rents generate recurrent (sustainable) revenue. The word دولة *dawlah* "state" is used, it should be replaced by محافظة *muḥāfaẓah* "governorate".

Sub-clause 44-2-4 "Sums of renting lands utilized by companies" overlaps the previous one.

Sub-clause 44-2-5 "Taxes …. as compensation for polluting the environment and damage of infrastructure" overlaps sub-clause 44-2-2. There are also gaps: dividends are not mentioned[21]. All the problems of overlaps and gaps can be avoided if the GFS classification is followed.

Sub-clauses 44-2-7 (about sharing half of the revenue from border posts) and 44-2-8 (about petro-dollars) are not related to internally generated revenue, and would have been better placed in a separate clause, to distinguish them from the revenue sources administered by the governorate itself.

Sub-clause 44-2-7 even allows governorates to share half of visa fees, although they should most definitely not issue visas, as that is (or should be) part of the exclusive powers of the federation listed in Constitution article 110 clauses 1 ("formulating foreign policy…") and 2 ("formulating and executing national security policy, including establishing and managing armed forces to secure the protection and guarantee the security of Iraq's borders and to defend Iraq"). Involving governorates in issuing visa clearly undermines the sovereignty of the federation. Or, if governorates are not involved in issuing visas, but still take half of the revenues, the visa fees are implicitly a "visa tax", in a way that harms Iraq's international trade and its attractiveness to tourists, and that may be at odds with the accession criteria of the World Trade Organization (WTO) of which Iraq aspires to be a member.

[21] In the provinces of the Netherlands, dividends paid by energy companies used to generate ≈15% of provincial revenues. In 2009 new legislation came into effect prohibiting provinces, municipalities, and water management districts to expose themselves to financial risk by investing in shares; instead they must invest their excess liquidities in Treasury Bills. The shares were sold, and now interest generates a similar share of provincial revenues.

Clause 44-2 has also, in all of its versions, failed to impose criteria for governorate revenue laws, like the specification of the payer of the charge, the base of the charge, the rates of the charge, the exemptions from the charge, the deadlines for payment of the charge, and sanctions on late payment or non-payment. Chapter 2 of Deliverable 4 shows that this is a serious problem; a solution is proposed in § 3.4 of the same document.
Further refinements of clause 44-2 are not proposed, because they

- depend on the concrete revenue sources to be assigned;
- also depend on the decisions to be taken in the future with respect to the revenue sources to be assigned to Iraq's municipalities; and
- may require a review of the applicability of the entirety of Iraq's PFM laws to governorates. Examples of this problem are the regulation of a) borrowing, b) the acceptance of grants from donors, c) the selling of government-owned assets, d) banking arrangements, e) payment procedures, f) the admissibility (or otherwise) of external revenue collectors, g) accounting rules (cash accounting vs. accruals accounting; amendments to the Chart of Accounts), h) the auditing and publication of financial reports, and i) the internal audit function with respect to revenue.

Finally, clause 44-3:

> "Third: Local authorities shall be allocated a fair share for administrative units under their jurisdiction sufficient to fulfil their tasks and responsibilities and based on their population rate."

It is about transfers again and this time for municipalities. The principle of vertical equity is mentioned, but the principle of equalization is not (the COSIT may not have the statistics to apply that). This article will deserve closer attention when municipalities become the focus of Iraq's decentralization process.

Summary. Clause 44-2 is to be rewritten entirely. Highly needed specifications of revenue sources to be assigned to governorates and conditions to be met by governorate laws on their revenue sources are proposed in § 1.2 of Deliverable 4.

2.1.3 Article 45

Article 45 has been placed in Part IV with Final Provisions, although it has always been an essential part of the law. It said, in its original version:

> "First: A High Commission shall be formed for coordination between the Provinces headed by the President of the Council of Ministers and the membership of the Governors, and shall be competent to consider the affairs of the Provinces, their local administrations, and means of coordination between them. It shall address the problems and obstacles and all the inter-provincial affairs.
> Second: The Commission shall meet upon the call of its Head every sixty days or whenever it is necessary.
> Third: The Head of the Commission may invite any person whose presence is deemed necessary to the sessions of the Commission."

Several aspects are noteworthy.
First of all, the name of the High Commission for Coordination between Provinces. If its purpose was just coordination between the provinces, why was there a role for the Prime Minister whose role in most countries is the coordination between ministers, not provinces?
Second, its composition. If the purpose was coordination between the provinces and federal government, it seems normal that the Prime Minister would be seconded by the Minister of Finance and the Minister of State for Governorate Affairs. The role of a prime minister is to ensure the unity of the policies of the ministers, but governors are not ministers – so was it strictly necessary that the prime minister was a member, if only those two ministers would have been members?
Third, what were the Commission's powers in 2008? Concrete powers are not mentioned, and the translated version of 2008 remarks: "The high commission's role is advisory in nature." Even so, the Commission could have served as a very useful platform for dialogue between the two tiers of government on intergovernmental financial relationships. According to the instructive footnote in the English version of early 2011 that is not what happened:

> "The commission contemplated by the drafters of Law 21 would operate like a governors' club under the direction of the Prime Minister. Although the law anticipates periodic meetings every 60 days, in practice, the commission has met whenever the Prime Minister has decided it was necessary. Since 2009, there have been three such meetings. The first was an informal governors' meeting held in July 2009, to take steps towards organizing the commission and a Secretariat. The subsequent organization conference was then held in January 2010 in Wasit, during which the commission was formally announced and the Minister of State for Provincial Affairs at the time, Khulood al Majoon, was designated as its head. The commission never met again in 2010. After a new government was formed in December 2010, however, a new Minister was named: Turhan Abdullah, a Turkoman member of the Kirkuk (Ta'meem) provincial council. Although the Minister of State for Provincial Affairs currently has no rule-making authority and an inadequate professional staff, he may perhaps be able to revive the commission and realize its purpose under Article 45. Hopes were raised when the Commission met again in January 2011."

This comment is helpful, but does not make fully clear whether the Commission's failure was due to the lack of political commitment at the level of central government, or lack of something else.

In August 2013 the contents of article 45 were replaced by the following block of text.

"First: A commission shall be established named (High Commission for Coordination among the Provinces), chaired by Prime Minister and membership of Ministers of Municipalities and Public [Works], Reconstruction and Housing, Labor and Social Affairs, Education, Health, Planning, Agriculture, Finance and Sports and Youth, State Minister for Provincial Affairs, Governors, and chairmen of provincial councils, and undertake the following:

1. Gradually transfer sub-directorates, departments, tasks, services and competencies executed by Ministries of Municipalities and [Public Works], Reconstruction and Housing, Labor and Social Affairs, Education, Health, Planning, Agriculture, Finance and Sports and Youth, along with their funds allocated by the General Budget, and their staff to the provinces in accordance with their functions set forth in the Constitution and relevant laws, whereby the role of ministries shall remain in planning general policy.
2. Coordinating among the provinces on everything related to their affairs and local administration and tackling problems and obstacles faced.
3. Setting mechanisms to manage joint competencies-jurisdictions between federal and local governments stated in Articles 112, 113 and 114 of the Constitution.
4. Reviewing the authorization of federal authorities that are requested by local government from the federal government and vice versa which are required to manage investment projects and facilitate administering the province according to the provisions of Article 123 of the Constitution.
5. The Commission shall accomplish its functions mentioned in Paragraph (1) above within two years starting from the date of which this law comes to force. In the event these tasks are not accomplished, they shall be considered transferred by law.
6. The Commission shall convene at least once every two months or whenever necessary.
7. The Commission shall develop a bylaw organizing its meetings and following up its businesses.

Second: A coordinating committee shall be established in every province. It shall be chaired by the governor and membership of heads of administrative units under jurisdiction of province and chairmen of district and sub-district councils and shall undertake the following:

1. Addressing mutual issues among administrative units.
2. Mandating powers to heads of administrative units."

It is remarkable that two times Finance is mentioned as part of an enumeration of eight spending ministries, whereas in reality its position was decidedly different. (The same applies probably to Planning too). In any case, MoF was now included, so that indeed the Commission (the HCCP) was in a position to provide advice on the gradual transfer of "tasks, services and competencies" with respect to the administration of revenues to be reassigned. It was also an improvement that the State Minister for Governorate Affairs became a member now. All the members were still politicians, there was no place for civil servants (no responsibilities were delegated at all), nor were seats reserved for independent (academic or other) experts. The chairpersons of the provincial councils were members, although these are not part of the executive branch of government, like all the others, but the legislative branch, and it is not so obvious why they were there.

From August 2013, the HCCP was no longer there just for advice and consultation; it now had powers to take decisions and implement change. Sub-clause 1-1 is among the most important.

First, it defines the responsibilities to be decentralized. It is not known which considerations led to the selection made, and this report cannot judge that choice. A function seemingly suitable for decentralization like the traffic police, associated with revenue sources like vehicle license fees, driving license fees, traffic fines[22], the benefits from seizing the vehicles of offenders[23], and in the future eventually road tolls, was not decentralized. The General-Directorate of Traffic remains under the Ministry of the Interior[24].

Second, it contains the phrase "along with their funds allocated by the General Budget". This means that estimates should have been produced, for each governorate, of expenditure amounts related to each function to be decentralized. This is important to support the task of revenue reassignment. Because "funding follows function", without such information the revenue work has to be done "in the dark". There are no indications that this responsibility was carried out.

Sub-clause 1-2 about "coordination among the provinces" may concern situations where there are clearly opposite interests between provinces, like with respect to the use of customs revenues as a revenue source for governorates, the allocation of the petro-dollars, and applying the equalization principle to the ARDP funds. Would the commission vote on difficult decisions, or would the 10 or 11 federal ministers always prevail over the governorates?

Sub-clause 1-3 refers among other things to Constitution article 114, where it is said that customs administration shall be an area of joint competency of the federal and governorate tiers of government. It is unknown if any mechanism to distribute the work of customs administration was developed.

Sub-clause 1-4 could concern a review of the (temporary or permanent) retention of the administration of the property taxes and property transfer tax.

Sub-clause 1-5 defines the time frame of two years after the publication of Law No. 19 of 2013 of 5 August 2013, a term that expired recently on 5 August 2015, but was extended for 3 months.

Until 1 August 2015 the HCCP, established in 2013, was not much more effective than its predecessor with the same name established in 2008. Going by the text of sub-clause 1-5, the HCCP was going to be defunct as per 5 August 2015. A letter from the Prime Minister's Office dated 12 August 2015 refers to Resolution of the Council of Ministers No. 304 of 2015 and specifies an extension of three months (i.e. until 5 November 2015) for the transfer of the responsibilities. In its meeting of 16 November 2015, the HCCP (chaired by the Prime Minister) extended its mandate again, this time without specification of a deadline. The meeting creates the new position of Secretary-General, reporting to the Prime Minister. As of late December 2015, the process of transfer of responsibilities is still ongoing. The HCCP is still in existence and active; it is unlikely that it will be dissolved in the short term.

[22] www.egov.gov.iq/egov-iraq/index.jsp?sid=1&id=355&pid=120&lng=en; www.iraqcoalition.org/regulations/20040520_CPAORD86_Traffic_Code_with_Annex_A.pdf, articles 26-31
[23] Sizeable in Iraq, www.itp.gov.iq/newcar.htm
[24] www.itp.gov.iq

The job defined in clause 1, including the work on Governorate revenue, remains to be done urgently. The next amended version of article 45 should definitely mention the seven or eight government responsibilities devolved to the governorates. What it will determine regarding HCCP is an open question. The HCCP does not have a permanent character. Instead of that, there is need for a permanent platform for dialogue between the federal and provincial tiers of government, with a different composition. For instance, it should include independent experts, like professors of public finance or eventually international advisors on long-term contracts. Deliverable 6 will elaborate a proposal to redraft article 45.

Recommendations. MoF and the governorates should cooperate to obtain estimates for each Governorate of the spending amounts related to each of the eight functions to be decentralized. – Article 45 should be entirely redrafted.

2.2 Review of the revenue provisions of Najaf Governorate: Law 1 of 30 January 2010 on the Establishment of the Local Revenue Fund

The following section reviews a law from Najaf Governorate; its scope is somewhat similar to that of Law No. 21 of 2008, but at the governorate level. It is chosen as an example of how the present system apparently works at the governorate level. Najaf has to be commended for its pioneering spirit, introducing legislation with respect to governorate revenue in a vacuum caused by the absence of the national legislation called for by article 122-2 of the Constitution. It is not known if other governorates have adopted similar laws.

2.2.1 In Arabic[25]

قانون تشكيل صندوق الموارد المحلية

المادة (1)

أ (...)

ب تودع في الصندوق المشار إليه في الفقرة (1) من هذه المادة جميع الإرادات التي تفرض وتجبى محلياً في داخل الحدود الإدارية لمحافظة النجف الأشرف، وكذلك الهبات التي تمنح للمحافظة.

المادة (2)

تصنف الإرادات الوارد ذكرها في الفقرة (ب) من المادة الأولى من هذا القانون كالأتي:

أ جميع الإرادات المتحققة من المشاريع المنفذة أو التي ستنفذ من أموال الهبات أو أموال تنمية الأقاليم أو أموال هذا الصندوق.

ب جميع الرسوم والضرائب والضمائم المحلية التي تفرض بموجب القوانين المحلية الصادرة عن مجلس المحافظة، والغرمات المحلية التي تفرض نتيجة الإخلال بالعقود أو الإجازات المحلية.

ت جميع الإرادات غير المذكورة في البندين (أ، ب) من هذه المادة والتي ليست من الإرادات العامة لخزينة الدولة المركزية.

المادة (3)

يشكل بموجب هذا القانون قسم مالي خاص في ديوان محافظة النجف الأشرف يعنى بالأمور الحسابية، من حيث الحساب والصرف والتدقيق، المتعلقة بالصندوق، يسمى قسم الخزينة المحلي ويرتبط بالمحافظ. ويتكون من التشكيلات الأتية:

أ (...)

ب (...)

ت (...)

ث (...)

ج شعبة الإرادات المحلية: تتولى متابعة جباية إيرادات الصندوق المنصوص عليها في هذا القانون وتنظيم حسابتها، وجباية هذه الإيرادات من قبل موظفيها إن استلزم الأمر وتحديد إجراءات وأسس الجباية ورفعها إلى المحافظ، وتقديم المقترحات لتطوير التشريعات الخاصة بالإيرادات المحلية في ضوء ما يستجد من أمور أو تقديم مقترحات باستحداث إيرادات جديدة أو إلغاء إيرادات قائمة في ضوء الدراسات التي تقوم بها ورفعها إلى المحافظ، الذي يقوم في كلتا الحالتين بإرسالها إلى مجلس المحافظة لإصدار القرار الذي يراه مناسباً بصددها.

2.2.2 In English

Article 1

a (...)

b There shall be deposited in the Fund referred to in clause (1) of this article all revenues which are imposed and levied locally within the administrative borders of the Governorate of Al-Najaf Al-Ashraf, and likewise the gifts that are donated to the Governorate.

[25] *Najaf Gazette* No. 5, www.iraq-lg-law.org/en/node/369, softcopy pp. 9-14.

Article 2

The incoming revenues mentioned in clause (b) of article 1 of this Act shall be classified as follows:

a All revenues realized from projects that were implemented or which will be implemented, from gifts, or regional development funds, or funds of this treasury.
b all local fees, taxes and surtaxes[26] which are imposed under the local laws issued by the provincial council, and local fines which are imposed in consequence of breach of contracts or local licenses.
c all revenues not mentioned in items (a, b) of this article, and which does not belong to the public revenues of the central treasury of the state.

Article 3

There shall be constituted under this law a special financial section in the Governor's Office of the Governorate of Al-Najaf Al-Ashraf, i.e. accounting affairs, with respect to accounting, spending/payments and audit, attached to the Fund, called the Local Treasury Section, and reporting to the Governor. It shall consist of the following organizational units:

a the head of the section and his assistant (...)
b the Administrative Sector (...)
c the Budget Sector (...)
d the Accounting Sector (...)
e the Local Revenue Sector: responsible for the follow-up of the collection of revenues for the Fund provided for in this Law and organizing the accounting for it, and the collection of these revenues by employees. Where warranted, identification of procedures and foundations for collection, and submitting them to the governor, and submitting proposals for the development of special legislation for local revenue in the light of actual findings, or submitting proposals for the introduction of new revenue or canceling existing revenue in the light of the studies carried out and submitted to the governor, which is in both cases sent to the Provincial Council for issuing the decision which it deems appropriate concerning the matter.

2.2.3 Review of Najaf's Law No. 1 of 30 January 2010

The following comments and criticisms apply:

- Positive elements. Various positive elements deserve to be mentioned specifically. Rightly, clause 3e does not subordinate the Local Revenue Sector to the Budget Sector. And the same clause, describing the revenue policy function, specifically mentions policy evaluations (الدراسات), a very important thing.

- Ruling out extra-budgetary entities? "There shall be deposited in the Fund referred to in clause (1) of this article all revenues which are imposed and levied locally" (clause 1b) seems to rule out all extra-budgetary entities: all 100% governorate-owned companies or agencies, like a bus company or a company renting out governorate-owned real estate.

- Ruling out municipal revenue. The phrases "…all revenues which are imposed and levied locally…" (clause 1b) and "all revenues not mentioned in items (a, b) of this article, and

[26] H. Wehr: *Arabic-English Dictionary* (1979) p. 636: "ضميمة *ḍamīma* pl. ضمائم *ḍamā'im* addition, supplement; increase, raise (of salary)." In the present context: a surcharge.

which does not belong to the public revenues of the central treasury of the state" (clause 2c) leave no place for municipal revenue. These phrases must be amended soonest, even before the municipal tier of government will come back to life on the basis of already existing national laws, Law no. 130 of 1963 on the Revenues of the Municipalities and Law no. 165 of 1964 on the Administration of the Municipalities. Although these two laws have "gone in hibernation" since 2003 and are not being implemented, they are still valid. Law no. 2001 of 2008 gives in clause 7-3 governorates the right to legislate "in a manner that does not contradict the provisions of the Constitution and federal laws", but here there is such a contradiction. The different tiers of government (in many countries: three) should be seen as colleagues, not as rivals and competitors for the same sources of revenue.

- Flawed revenue classification. The subject of article 2 is the classification of revenue, rather surprisingly as this is normally not covered by a law, it should be an administrative matter. Formulating a classification of revenue is different from providing a legal basis for revenues, and from imposing an obligation on citizens to pay it. Internationally, it is normal to give an enumeration of legal sources of governorate revenue, in conformity to the constitution and national legislation such as Law No. 21 of 2008, which had already been introduced at the time but is not being referred to, not specifically but also not in an abstract way by a phrase "Governorate revenue shall consist of all revenues received in conformity to the Constitution and federal and governorate laws". This absence is a flaw – even in the present absence of the law called for in clause 122-2 of the Constitution, which should contain a comprehensive enumeration of legitimate governorate revenue sources (Law No. 21 of 2008 fails to do that).

  The usefulness of the classification provided is doubtful. Presently, the most important revenue category, transfers from federal government, is not mentioned explicitly. Nor are sales of assets (land, shares), rent, or dividends. Clauses 2-a and 2-b lump together quite heterogeneous revenue streams that would need to be disaggregated to become relevant for purposes of policy making and accountability towards the citizens. Several categories "fall between the cracks": 2-a does not cover the interest or repayment of loans extended by the Governorate, and 2-b fails to cover fines for offenses such as traffic fines. Loans received from others than "regional development funds" (like banks, or national government, or international donors) are covered by 2-a, but probably not by 2-b. – In case it would matter: the classification does not match the enumeration given in article 44 of Law 21 of 2008 (which has its own flaws).

- Appropriating revenue from state-owned agencies and enterprises? Clause 2c "all revenues not mentioned in items (a, b) of this article, and which does not belong to the public revenues of the central treasury of the state" suggests that all government revenue that does not go to the national treasury should go to the governorate treasury. A counter-example would be the aviation fees collected by Najaf International Airport, which falls under the Iraqi Civil Aviation Authority[27] as aviation is not a decentralized responsibility. This is the same problem as was already observed with respect to municipal revenue: the law fails to provide a good definition of governorate revenue. Which is so because national legislation (included Law no. 21 of 2008) fails to do the same.

- Collection of revenue by other parties apparently ruled out. Clause 3e, in the phrase "…and the collection of these revenues by employees", suggests that collection cannot

[27] www.iraqcaa.com/menu/airports.html

happen by others than employees. There are many scenarios in which revenue would best be collected by third parties (national government, public utilities like the suppliers of water and electricity, partners in a Public Private Partnership, other governorates or an association of governorates). So that would be a serious restriction.

– Problematic formulations. Clause 2-a ends cryptically: "أو أموال هذا الصندوق" *aw amwāl hadhihi al-ṣundūq* "or the funds / finances / assets / treasures of this Fund". That is circular or tautological, because the whole article is classifying or describing all revenues that go into the Fund. – Instead of the name "Local Treasury Section" (art. 3), the name "Financial Affairs Department" might be preferred.

The above comments are critical. They have to be. As mentioned, Najaf Governorate showed courage by being the first to address some of the financial issues that unavoidably have to be addressed. There is no Public Financial Management Act in the world that gets all the issues right at the outset; in reality they keep being amended and refined continuously. Most of the above criticisms can be addressed by minor changes in formulation, in particular the radical word جميع *djamīʿ* "all". It is encouraging that Iraq's governorates have started thinking about the issues at stake. A good thing of sub-national revenue is that various jurisdictions can learn about each other's problems and solutions in the fields of policy and legislation, using the same language and being subject to the same legislative regime.

Recommendations. Drafters of revenue legislation at Governorate level should
- put pressure on federal government to explicitly specify revenue sources to be assigned to governorates, as the core of the law required by clause 122-2 of the Constitution;
- on a permanent basis, learn from each other's documents and practices.

Both purposes would be served by the establishment of an Association of Governorates, and/or a permanent Commission on Inter-Governmental Financial Relationships.

2.3. Project working Paper on the Proposed Financial Procedures after Implementation of Article 45 of Law 21 as amended

This document, dated "2015", was presented in a Financial Management Workshop on 25-26 February 2015 organized by GSP/Taqadum. It has 21 pages in the Arabic version (the version considered authoritative). Its contents are as follows.

- Introduction (page A2, E2)
- Proposed organization structure of Provincial Directorate of Treasury (page A3, E3)
- Tasks and responsibilities of the four proposed Departments of the Public Directorate of Finance, namely Budgeting (page A4, E4), Accounting (page A6, E6), Administration (page A7, E7), Directorate of Treasury (A8, E8)
- Procedures of budget preparation (current and investment expenditures), in 18 steps (page 13) of which 15 are described in detail (pages A12-A18, E14-E20)
- Cash transfers to districts (page A18, E20)
- Audit and control procedures (page A18, E21)
- Current Classification of Expenses (page A19, E22)
- Classification of Investment Spending (page A20, E23)
- New sections within the administrative classification for the provinces (page A21, E24)

In the organizational chart on page 3 of the provincial "Ministry of Finance" is called دائرة الشؤون المالية العامة *dā'irah al-shu'ūn al-māliyah al-ᶜāmah* "Directorate for Public Finance Affairs" (as in the 3rd item above), but the title of the organizational chart speaks about the خزينة *khazīnah* "Treasury" (as in the 2nd item above). Apparently the document treats these two notions as synonyms. But MoF will retain its presence in the provinces under the name "Treasury", and there will also be a governorate section with the same name, so the name "Directorate for Public Finance Affairs" must be preferred to avoid confusion.

In the organization structure that is proposed here, revenue is put, within the قسم الموازنة *qism al-mawāzanah* "Budget Section", under the شعبة المصروفات والايرادات *shuᶜbah al-maṣrūfāt wa-l-īrādāt* "Sector for Expenditures and Revenues". In the Arabic version (not in the English one), this Sector is subdivided further into three units: المصروفات *al-maṣrūfāt* "Expenditures", الايرادات الاتحادية *al-īrādāt al-ittiḥādiyyah* "Federal Revenues", and الايرادات المحلية *al-īrādāt al-muḥaliyyah* "Local Revenues".

Will "federal revenues" concern only revenues transferred by the national tier of government, such as the ARDP funds and the petro dollars? Or will it also comprise federal revenues that will never reach the treasury of the governorate? The former option should be considered a normal consequence of decentralization. The second one, which seems to be envisaged, would call for further disentanglement of responsibilities. In a scenario where real property tax and hotel tax are reassigned to the governorates but continue to be administered by the federal government, these might also fall under "federal revenues". "Local revenues", on the other hand, will cover those revenue sources that are administered by the governorates themselves; one could also speak of "internally generated revenues" or "own source revenue". The document does not give definitions of these two notions. Not even where, in the Arabic version (page A4, at the bottom), the duties of the three units of the Division for Expenditures and Revenues are specified (absent from the English version):

B. Unit Federal Revenue: its duties comprise the following:

- Follow-up on collection of federal revenues according to the law
- Organizing/arranging/preparing tables of federal revenue realized in the governorate
- Provide the Ministry of Finance with financial reports about federal revenues according to specific timetables

C. Unit Local Revenue

- Fulfilling the task of follow-up on collection of governorate revenues
- Organizing/arranging/preparing tables of local revenue realized in the governorate
- Providing the Office of the Governor and the Council with financial reports around the collection of local revenues in the governorate and conformity to estimated revenue.

These tasks, in the areas of revenue reporting, and possibly revenue analysis and revenue forecasting, but not even revenue policy, are extremely limited. With respect to "federal revenue", this is fine. With respect to "local revenue" it cannot be. The functions described do not start to address the situation of a tier of government that needs to administer its own sources of revenue, including the functions of registration, communication with the citizen, verification, and enforcement. This explains why in the proposed organization structure the revenue function is so sub-ordinate. In many government financial departments worldwide that administer their own revenue sources, revenue is represented at the highest level, with a director or director-general equal in rank with the budget, treasury, and accounting functions.

New plans have now proposed the establishment of a local revenues unit in the Governor's Office. This unit will deal with the day-to-day work of revenue administrations, such as registration, communication with citizens, collection, accounting, and generating financial reports. This unit will report to a unit in the Financial Affairs Directorate, and this unit will deal with planning and financial forecasting for the purpose of budget formulation.

Most of the document is not directly relevant for revenue. This is acknowledged in the introduction at page A2/E2, which ends saying:

> "This working paper shall be followed by another paper on how to deal with locally generated revenues according to Article 44 of Law 21 as amended. A group of administrative and financial procedures for dealing with these revenues shall be proposed."

Further minor issues:

- A duplication of the responsibility of "Follows up on collection of the province's revenues" (Budget Department, page A4, E4) and "Follow up on collection of revenues generated according to provisions of Article 44 of Law 21 as amended as shown in the attached table" (Accounting Department, page A6, E6).

- Related to the previous point: in the discussion of revenue forecasting (page A15-A16, E17) it would be helpful to know which organizational unit will do it.

Conclusion. The document deals with revenue only very briefly, and is not adequate for scenarios where the governorates will administer their own revenues. Indeed further written guidelines for the governorates are desirable, in the form of the GSP/Taqadum training manual to be drafted in December 2015 specifying the organization structure and functions of a fully-fledged Revenue Department.

2.4. Project Report on the Recommendations on the Transfer of Fiscal Authority

The GSP/Taqadum project produced a report entitled *Decentralization in Iraq: Recommendations on the Transfer of Fiscal Authority*, which is dated 4 March 2015. That is only nine days after the completion of the workshop mentioned under 2.3, and there is a considerable overlap with the previous document (e.g. the organization structure and the figure showing the steps of the budget preparation process). Its English version (supposedly authoritative) has 45 pages. The document's focus is on audit and accounting, but the present review will be limited to those of its parts (mainly pp. 8f and 16-20) that are relevant for revenue.

2.4.1 The Law on the Revenues of Municipalities (Law 130 of 1963) (pp. 8f)

The pages 8 (from the heading "Precedent" onwards) and 9 of the report contain a discussion of Law No. 130 of 1963 on the Revenues of Municipalities. The main purpose is arguing that decentralized revenue collection is not entirely new in Iraq, and that Law No. 130 of 1963 could serve as the basis for new legislation.

2.4.1.1 Version of the Law

The report does not mention which version of the law is used, and in particular ignores (saying "Law 130 could be enforced *without amendment* for a lengthy period of time…", p. 9) its having been amended regularly (Law No. 44 of 1988 was its 8th amendment) up until the 1990s. That matters because sometimes it seems that a different document is discussed. It is hard to understand how the following fragments are related to Law No. 130.

> "…There was as well a mechanism for resolving delinquencies and debt collection complete with interest penalties and provisions for appeals and adjudications through a Municipalities Court System. There were even exclusions listed such as religious and charitable NGOs where there were reciprocal considerations with other countries." (p. 8)
> "…Activities and functions of the Municipalities unit for which revenues were collected went to traditional municipal services such as: garbage collection; parks and gardens; street, sidewalk and other right-of-way maintenance and beautification; street lighting; and public markets." (p. 9)
>
> "…its extensive administrative components can offer an excellent beginning framework for a model revenue collection structure in the provinces.[28] Structure with attendant functions such as legislative authority and legal fundamentals, billing and collection activities, cash and financial management, regulation and enforcement, and adjudication or dispute resolution mechanisms are already identified." (p. 9)

"Adjudication and dispute resolution mechanisms" play a role mainly in real property tax, where taxpayers can object and appeal against the valuation of their property. In Iraq, real property tax is administered at the national, not yet any sub-national level.

[28] A claim repeated at p. 18, first paragraph, of the report under review.

2.4.1.2 Does Law No. 130 concern provincial revenue?

The report's discussion of Law No. 130, which is a law on municipal revenue, seems to mix up governorates (called "provinces") and municipalities, with language such as "…a variety of revenues in the provinces to financially support a service delivery base in the provinces", and "Under Law 130, revenues that were collected in the province remained in the province with a few exceptions". In reality, Law No. 130 uses the terminology related to governorates as follows:

– لواء *liwā'* "province", only 3 times: once in art. 1-2 as a source of revenue (aid), and twice in 3-1[29], about the Governorate Council having the power to cancel debts to the municipality;

– the plural محافظات *muḥāfaẓāt* "governorates", only in section 2 clause 1 of the Annex, where a specific fee rate for construction permits is defined for centers (capitals) of governorates;

– the phrase وللمحافظ بالنسبة للبلديات في محافظته "and the Governor with respect to the municipalities in his Governorate", only in section 8 of the Annex, about the Governor having the power to exempt charities from the municipal fee on places of amusement.

Nothing of this concerns the revenue sources of the Governorate. Confusion is not necessary.

2.4.1.3 History of Law No. 130

The report argues that Law No. 130 is a relevant precedent. But does not give revenue figures from the past, or concrete information about successes and obstacles when it was implemented in practice. The basis is just the reading of its text. Its history is summarized at page 9 as follows.

> "Law 130 could be enforced […] for a lengthy period of time largely because of stability of governmental structures, exchange rates, and an economy that reaped the benefits of increases in pricing and quantity of oil production. Economic sanctions of the 1990's predictably and severely disrupted all of those stability factors, including taking its toll on the law through a gradual degradation of administration, collection and adjudication. Final and virtual abandonment of the law coincided with the 2003 invasion and subsequent vacuum created with the loss of governance. With virtually all institutional knowledge lost and no attempt to re-capture any vestiges of the law since, there is now a new generation with a completely different set of expectations associated with service delivery, none attributable to the pay-for-service principles of the past that were incorporated in the principles associated with Law 130."

To this, the following comments could be added.

– The impact of conflict (the war against Iran, the war following the occupation of Kuwait, and presently the conflict related to ISIS) on municipal revenue administration has also

[29] In this clause, المجلس البلدي *al-madjlis al-baladī* "the municipal council" should not be translated as "Governorate Council" as happened in http://pdf.usaid.gov/pdf_docs/PNADL281.pdf, p. 29.

been substantial, first of all because both municipal revenue officers and payers of municipal revenue were drafted for military service.

- As for exchange rates and oil, municipal revenue is not directly linked to them, as municipalities do not deal with imports or exports. The large instable variable in Iraq's economy is the value of oil exports, which impacts the transfers paid from the national budget. Iraq's lower levels of government need revenue sources like taxes and fees in order to cushion that instability.

- The report does not give a full explanation why Law No. 130 was not administered from 2003 onwards.

- The "pay-for-service principle" is expressed in article 5 saying "If the municipality provides any service, then it may determine the fee that must be paid for it, with the approval of the Minister of Municipalities." There is no mention here of a law, which is required presently by article 28-1 of the Constitution (2005).

As a summary, page 8 states that Law No. 130 is "…obviously not administered in the present fiscal landscape".

2.4.1.4 Quality of Law No. 130

The report praises Law No. 130 in the following terms:

- "Law 130 includes an extensive listing of revenues for collection …" (p. 8).
  But it does not mention real property tax, revenues shared by higher levels of government with municipalities, garbage collection fees, sewerage fees, zoning fees, betterment fees, encroachment fees, parking fees, market fees, and rent for the use of municipal property.

- "The list and schedule were comprehensive as to who might be subject to the law, such as: new construction, slaughter houses, advertising, businesses and professional services, factories, amusement parks, hotels and night clubs, auction houses—even tobacco, alcohol and soft drinks" (p. 8).

  This mixes up taxpayer and tax base (new buildings, and products like drinks, are not persons or sectors). It is contradicted by the previous point that many revenue sources are not mentioned. And it ignores that important sectors of economic activity are not mentioned (agriculture; not all agricultural enterprises are poor) or may have been undertaxed. The latter should definitely be researched for the construction sector and developers of real estate. These sectors benefit much from municipal services, and have a large capacity to contribute their financial share.

Summary of 2.4.1. The recommendation to use Law No. 130 of 1963 as a basis for new legislation cannot be followed.

2.4.2 Local Revenue Generation, Collection, and Management (pp. 16-20)

This part of the report has the ambition of recommending "steps to develop a relevant and practical model for local revenue generation, collection and management" (p. 16). Yet, in spite of this good intention, the recommendations are a bit abstract, and more focusing on sketching principles that should be underlying the policies than the establishment of a concrete legal and administrative system at short notice. No legal provisions are suggested (probably because it is supposed that Law No. 130 will provide the model for them).

The report recommends that transfers continue "under the present concept of general revenue sharing based on provinces' population size" (p. 17), without discussing the equalization principle, and the legal requirements to take needs or deprivation into account alongside population size. Also controversial is the statement

> "Once the operations and maintenance budget has been funded, amounts for capital budget purposes should be set aside for allocation to the provinces on two principle bases: 1) priority of capital projects based on need…" (p. 17)

because that is against the present laws and against the spirit of decentralized decision making.

An interesting idea, to be kept in mind, is that of revenue matching grants:

> "…2) commitment of a provincial revenue match similar to the concept of a block grant for funding. This concept will be illustrated regarding specific services in the Ministry of Municipalities and Public Works." (p. 17)

But that will work only if governorates will have their own sources of revenue. To address that most urgent issue, the report makes no concrete proposals on revenue assignment, but says: "Iraq needs a description and definition of types of potential revenues" (p. 18). Deliverable 4 will take that matter forward.

The report rightly says:

> "All revenues must be based on comprehensive legislative authority that would, in addition to setting fees and charges, determine equity and fairness, collection authority, and administration and penalties for delinquencies, including provisions for dispute resolution and adjudication …" (p. 17, bottom)

Again, Deliverable 4 takes this forward with a draft article in its § 3.4.

Recommendation. The idea of revenue matching grants, a bonus scheme to give governorates an incentive to collect revenue from their own sources, is an important idea for the design of transfers in the future.

3. Municipal Revenue

3.1 Introduction. Legal sources on the finances of municipalities

As mention in § 1.1, municipalities are not mentioned explicitly in the Constitution (2005). In particular, the Constitution gives no guarantees for their financial health.

They are also hardly mentioned in the consolidated version of Law No. 21 of 2008 as amended. The most relevant provision there is article 44 clause 3:

> "Local authorities [i.e. governorates] shall allocate a fair share for administrative units under their jurisdiction [municipalities?] sufficient to fulfill their tasks and responsibilities and based on their population "rate" [size]."

The legal status of Iraq's municipalities is presently determined by article 3 of Law No. 165 of 1964 on the Administration of the Municipalities[30], which is still in force:

> "The municipality shall have the status of a legal person that:
> (…)
> 2. levies taxes, fees and charges according to the provisions of the laws;
> (…)
> 7. enjoys financial autonomy;
> (…)"

Not mentioned in this article is the power of municipalities to adopt municipal bylaws, and it seems that this important power did not exist.

This law also determines the following:

- Municipalities shall have the right to sell the space above the pavement/sidewalk of the streets for the purpose of constructing one or more floors (art. 61). The international standard approach to this is to have such a citizen apply for an encroachment permit, for which he has to pay an annual fee (comparable to rent). Instruction No. 1 of 1965 on sidewalk space[31] is elaborating this;

- The fiscal year of municipalities shall commence on 1 April and end on 31 March, and that the mayor shall present estimates for the annual budget, including revenue estimates and spending estimates, before 1 January (art. 64-1);

- Municipalities can borrow only subject to the approval of MoF after ratification by the competent authorities (art. 64-7).

The main sources on the revenues of municipalities is Law No. 130 of 1963, which is reviewed in § 3.2. A brief inventory other legal documents affecting their revenues is presented in § 3.3.

[30] www.iraq-lg-law.org/en/node/158; this law has been frequently amended, in 2001 for the 13th time.
[31] www.iraq-lg-law.org/en/node/2491

3.2. Law on the Revenues of Municipalities, Law No. 130 of 1963[32]

3.2.1 General comments

Between 1963 and 1996, the law has been regularly amended or updated. Law No. 44 of 1988 starts by saying it's the 8th amendment law. The weaknesses of the law are many; it bears the traces of decades of neglect through over-centralization.

As already mentioned in § 2.4.1, Law No. 130 does not mention some of the standard sources of municipal revenue: real property tax, revenues shared by higher levels of government with municipalities (clause 44-3 of Law No. 21 of 2008; presently probably none), garbage collection fees, sewerage fees, zoning fees, municipal betterment fees (to be distinguished from governorate betterment fees), encroachment fees, parking fees, market fees, and rent for the use of municipal property. All of these should be assigned to municipalities (apart from real property tax, which Iraq may prefer to assign to the governorates), and provided for by law.

In the original version of the law, amounts are 33 times specified in terms of dinars (in 1963, 1 ID equalled about US$ 2.8), and 12 times even in terms of fils. After decades of inflation, all amounts (the largest is 500 dinar, presently the negligible amount of US$ 0.43) have been eroded completely. To rationalise them, they would have to be multiplied by a factor of the order of magnitude of possibly 3,000.There are no indications that between 1963 and 1996, when the rate schedules 1, 2, 3, and 5 of the Annex were amended, the amounts were ever adjusted for inflation.

Most subjects are dealt with very briefly. The amended Arabic version of 1996 has only 7 pages.

No mention is made of the eventual power of municipalities to regulate any aspect of municipal revenue by a municipal by-law, and probably that important power did not exist. There is no explicit definition of the payers of a tax or fee. For instance, excises on tobacco products, alcoholic drinks, and soft drinks (section 5 of the Attachment) could be paid by producers, importers, wholesalers, retailers, or a combination of these categories.

Deadlines for payment are not mentioned. The fees can apparently be paid, in full compliance with the law, on the last day of every year, or thereafter.

There is no mention of amounts to be charged for late payment, as a compensation for the fact that the municipality could not make use of money that was legally theirs. This could be called a "liquidity charge"; in other jurisdictions such amounts would be known as "statutory interest".

[32] The original publication in the Official Gazette is at www.iraq-lg-law.org/en/webfm_send/32 (non-searchable, Arabic; it fails to include section 8 of the Annex). There is an unofficial English translation of this outdated version of the law, made by the LGP, available at http://pdf.usaid.gov/pdf_docs/PNADL281.pdf, pp. 29-34 (including section 8 of the Annex on "casino duty"). This translation has flaws, with numerous words not translated or translated wrongly; and obviously it ignores the amendments.
The source used is the version at www.iraq-lg-law.org/ar/node/256 (searchable, Arabic, amended up until 1996, including section 8 of the Annex on رسوم الملاهي "fees on places of amusement / cabarets").

References to other laws are vague: 1-3 "…according to valid laws" وفق القوانين المعمول بها, 1-4 "…or other valid laws" والقوانين المرعية, 8 "Law regulating the collection of government-incurred debts…"[33] قانون جباية الديون المستحقة للحكومة. In principle, references should give the name of the law, and the number and the year.

The law does not make clear if, and under which conditions, the collection of revenue by private sector parties (Public Private Partnerships- PPPs) would be allowed.

The law will have "no teeth" unless there are adequate enforcement provisions. The temporary closure of premises for say 3 days, the refusal to issue a business license, a retrospective construction permit, or demolition of illegal constructions: all these potential instruments are not mentioned.

From the revenue sources which the attachment to the law assigns to municipalities, the following are "plankton" (i.e. having negligible revenue potential): abattoir fees (article 2), lottery and betting fees (article 4), auction fees (article 7), and casino fees (article 8).

The law gives no power whatsoever for municipalities to determine the rates of municipal taxes and fees; not even to adjust the rates for inflation in the past.

Recommendation. Law No. 130 of 1963 should be rewritten completely.
Garbage collection fees, sewerage fees, zoning fees, municipal betterment fees, encroachment fees, parking fees, market fees, and rent for the use of municipal property are among the revenue sources to be explicitly assigned to municipalities.

3.2.2 Specific comments to the articles

There are two revenue sources in the present law with significant revenue potential.
First, construction permit fees (section 1 of the attachment to the law), because the construction sector and real estate sector have a huge ability to pay and benefit much from municipal services and infrastructure such as zoning, roads, sewerage, water. The fee rates, presently ID 20 (≈ US$ 0.02) per m^2 for most purposes, are extremely low as compared to the fee rates in neighbouring Jordan in 2012: JD 0.40 (≈ US$ 0.56) per m^2 for residential purposes, and JD 1.50 (≈ US$ 2.11) per m^2 for commercial purposes.
Second, business license fees (section 6 of the attachment to the law). International standards in this area are not entirely clear. Some countries impose a business license fee based on turnover, but that would require tax inspections, for which in Iraq MoF is uniquely equipped, and it would not be beneficial to the business climate[34]. Furthermore, it is not so clear at

[33] Probably replaced by Law no. 56 of 1977 called قانون تحصيل الديوان الحكوم, www.iraq-lg-law.org/en/node/161
[34] Three important sources for the international experience on business licenses are
1) World Bank (Small and Medium Enterprise Department): *Business Licensing Reform: A Toolkit for Development Practitioners*, November 2006,
www-wds.worldbank.org/servlet/main?menuPK=64187510&pagePK=64193027&piPK=64187937&theSitePK=523679&entityID=000020439_20070319153948 or
www.businessenvironment.org/dyn/be/be2search.details2?p_phase_id=137&p_lang=en&p_phase_type_id=2;
2) Investment Climate Advisory Services, World Bank Group: *How to Reform Business Licenses*, June 2010, https://www.wbginvestmentclimate.org/uploads/howtoreformBL.pdf;
3) Investment Climate Advisory Services, World Bank Group: *Global Analysis of General Trade and Operational Licensing*, March 2012,
https://www.wbginvestmentclimate.org/uploads/Investment%20Climate%20Global%20Analysis.pdf.

which level of government large businesses should be licensed. Section 6 of the attachment shares in the general weakness of the law, in particular the classification of sectors of activity:

- The listing of professions and vocations in section 6 do not include new activities that have emerged since 1963: software developers, internet cafés, mobile telephone companies, organization advisers / consultancy firms, and more.

- There are also gaps with respect to activities that already existed in 1963: airlines, lawyers, translation bureaus, accountancy firms, private institutions for education and health care, other providers of non-traditional services, etc.

- These problems would have been resolved if there had been a category for "other" or "miscellaneous professions not else specified", but there is none.

- There are overlaps in the professions that are mentioned: building materials (5%) vs. building material supply firms (10%); importers of vehicles (10%) vs. vehicles and spare parts (5%); metal furniture (10%) vs. furniture (5%); shoes or hats (10%) vs. shoes (5%); etc.

- All of these problems might be resolved by adopting the classification of the COSIT, at a high level of aggregation for the sake of simplicity.

- Business license fees are determined based on rent. But that is hard to administer if rent is paid "under the table", without written contract. Due to the influence of the British mandate (1920-1932), property tax is also based on rent, so the administration of both should be ideally in one hand. But Iraq's property tax is presently administered by MoF. This puts the whole idea of generating substantial revenue from business license fees into question.

- In every country, the complexity or simplicity of the procedure to obtain a business license affects the business climate. To reduce the hassle, business licenses could be made valid for more than one year, perhaps three years.

- Section 6 of the attachment provides no guidance for scenarios where a business is established after the middle of a fiscal year, merges, is split, moves to a different district of the same city, or where its owner passes away, marries, or gets divorced.

Section 3 of the attachment provides for advertisement fees. Najaf Governorate has in its Law No. 8 of 2010 introduced advertisement fees that will benefit the governorate. This is an interesting case of "double taxation", i.e. taxation of the same tax base by different tiers of government. Federal government must play a coordinating role, and assign revenue sources explicitly to the three tiers of government, to prevent more problems of this nature happening.

Recommendation. In future efforts to reform municipal revenues, construction permit fees and business license fees should be given priority.

3.3 Listing of other legislation relevant for municipal revenue

This section contains a brief overview of legal documents that may also be relevant for the revenues of municipalities:

- Law No. 85 of 1963 on the paving of streets[35], amended by law No. 176 of 1969. This document provides for betterment fees, a good thing.

- Resolution No. 5 of 1996 amending the construction permit fees[36]. Already discussed in § 3.1 above.

- Instruction No. 16 of 2000[37] on water supply and the cost of sewerage services.

- Resolution No. 154 of 2001 on encroachments on state and municipal property[38]. This one outlaws encroachments, instead of regulating them by requiring licenses and the payment of encroachments fees. This is a missed opportunity and, therefore, this document deserves to be replaced.

- Resolution No. 95 (no longer in effect) of 29 May 2002 on the allocation of a percentage of basic revenues of the municipality for employees of the General-Directorate of Municipalities[39]. The purpose was to give revenue collecting officers of municipalities an incentive.

- Law No. 21 of 2013 on sales and rent of "state" property[40]. This law applies probably equally to the state, governorates, and municipalities. It is relevant for privatization (selling shares), sales of land, and the auctioning of goods (often vehicles) that were impounded.

[35] http://iraq-lg-law.org/en/node/105
[36] http://iraq-lg-law.org/en/node/1880
[37] www.iraq-lg-law.org/en/node/1154; www.iraq-lg-law.org/en/node/924
[38] http://iraq-lg-law.org/en/node/1350
[39] www.iraq-lg-law.org/en/node/433
[40] http://iraq-lg-law.org/en/node/2502